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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR          | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-------------------------------|---------------------|------------------|
| 10/658,316  | 09/09/2003  | Philip Katz                   |                     | 2164             |
| 7590 11/10/2005   |             |                               |                     |                  |
| Stephen E. Feldman, P.C.<br>12 East 41st Street<br>New York, NY 10017 |             | EXAMINER<br>MILLER, WILLIAM L |                     |                  |
|   |             | ART UNIT 3677 PAPER NUMBER    |                     |                  |
| DATE MAILED: 11/10/2005   |             |                               |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/658,316

Applicant(s)

KATZ ET AL.

Examiner

William L. Miller

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: ANNOTATED FIG. 2 USA D340670

## **DETAILED ACTION**

### ***Drawings***

1. Acknowledgement is made of the formal drawings, namely Figs. 1-6E, received on 09-01-2004. These drawings however failed to include originally presented Fig 7.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "31" in Fig. 7.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claims 1, 3-5, and 8 are objected to because of the following informalities: claim 1, line 6, after "said" insert --upper--; claim 3, line 2, change second recitation of "and" to --to--; claims 4, 5, and 8 currently depend from canceled claim 2. For examination purposes, claims 4, 5, and 8, are assumed to each depend directly from claim 1. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schachter (US#D340670) in view of Friedman et al. (US#6430963).

6. Regarding claims 1, 4, and 5, Schachter discloses a brilliant cut gemstone comprising: a brilliant cut crown on an upper side of a girdle including upper girdle facets and upper corner facets; the girdle having plane comprising 8 sides and shaped as an “approximately” equilateral octagon (Fig. 1); the corner facets spaced from the girdle (Fig. 2); and a pavilion located on a lower side of the girdle. Note: See annotated Fig. 2.

7. Regarding claim 1, Schachter fails to disclose the pavilion including lower girdle facets, bezel star facets, and lower corner facets wherein the angle between a table and the lower girdle facets is approximately 50-60 degrees. However, Friedman teaches in Fig. 3 a brilliant cut gemstone wherein the pavilion 30 includes lower girdle facets 32, bezel star facets 42, and lower corner facets 34 wherein the angle between a table 16 and the lower girdle facets is “approximately” 50-60 degrees (Fig. 3). This pavilion configuration enhances the brilliance of the gemstone. Therefore, as taught by Friedman, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Schachter such that the pavilion included lower girdle facets, bezel star facets, and lower corner facets wherein the angle between a table and the lower girdle facets was “approximately” 50-60 degrees for enhanced brilliance.

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8. Regarding claim 3, Friedman teaches the angle between the table and bezel star facet is “approximately” 38.1 to 43.5 degrees (Fig. 3).

9. Regarding claim 6, Friedman teaches the angle between the table and lower corner facets is “approximately” 40.1 to 46.9 degrees (Fig. 3).

10. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schachter in view of Friedman as applied to claim 1 above, and further in view of Wueste (US#6698239).

11. Regarding claim 7, it is unclear if Schachter discloses the angle between the table and upper girdle facets is 25-40 degrees. However, Wueste teaches a brilliant gemstone cut wherein the angle between the table and upper girdle facets is 25-40 degrees, namely 32-35 degrees (Table 2 as girdle plane 351 in Fig. 3C and table plane are substantially parallel), for enhanced brilliance. Therefore, as taught by Wueste, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Schachter such that the angle between the table and upper girdle facets was 25-40 degrees, namely 32-35 degrees, for enhanced brilliance.

12. Regarding claim 8, it is unclear if Schachter discloses the angle between the girdle and upper corner facets is 30-45 degrees. However, Wueste teaches a brilliant gemstone cut wherein the angle between the girdle plane 351 (Fig. 3C) and upper corner facets is 30-45 degrees, namely 29-32 (30-32) degrees (Table 2), for enhanced brilliance. Therefore, as taught by Wueste, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Schachter such that the angle between the girdle and upper corner facets was 35-40 degrees, namely 29-32 (30-32) degrees, for enhanced brilliance.

***Response to Arguments***

13. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is (571) 272-7068.

The examiner can normally be reached on Tuesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William L. Miller  
Primary Examiner  
Art Unit 3677



WLM

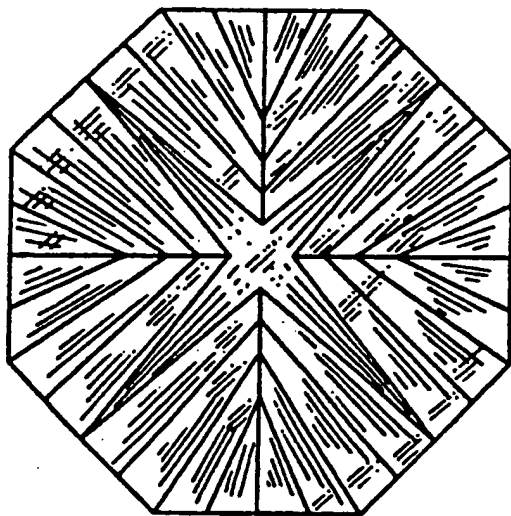
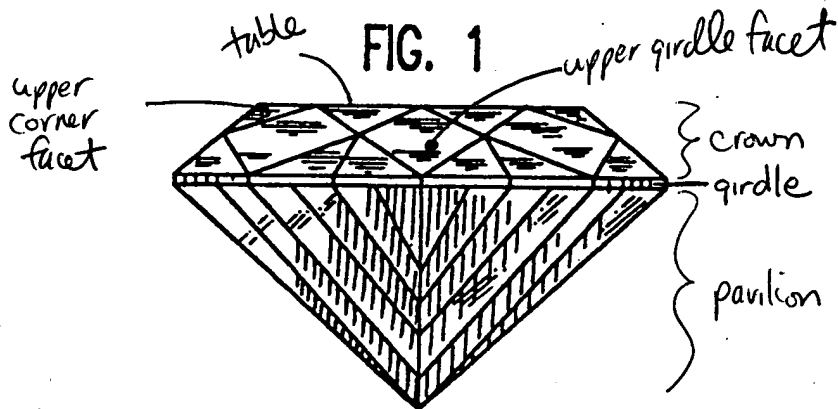
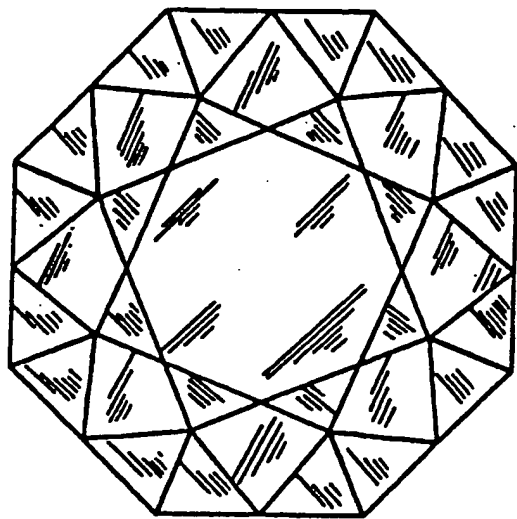


FIG. 3